



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

Agency: Department of Early Learning

☒ Permanent Rule  
☐ Emergency Rule

**Effective date of rule:**

**Permanent Rules**

☒ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☐ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:**

The Department of Early Learning (DEL) is adopting new **chapter 170-06 WAC - DEL Background Check Rules**, and revising related DEL child care licensing rules in chapters 170-151, 170-295, and 170-296 WAC. When effective, the permanent chapter 170-06 WAC will replace and supersede emergency background check rules filed under WSR 08-04-060.

New DEL background check rules are needed to implement chapter 265, Laws of 2006, and chapter 387, Laws of 2007. When DEL was established in 2006 as an independent agency, Department of Social and Health Services (DSHS) background check rules became obsolete for child care that is now licensed or certified by DEL. The new and revised rules being adopted: Consolidate background check requirements from the three current child care licensing WAC chapters into chapter 170-06 WAC; Clarify DEL's existing process for evaluating background check information: Provide clearer appeal rights; and Put into rule the current DEL Director's list of crimes and negative actions that are used, in part, to determine whether an applicant may obtain a DEL background clearance.

**Citation of existing rules affected by this order:**

Repealed: See Attachment A.  
Amended: See attachment A.  
Suspended: None

**Statutory authority for adoption:** Chapter 43.215 RCW and RCW 43.43.832

**Other authority:** Chapter 265, Laws of 2006 and chapter 387, Laws of 2007

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 08-06-101 on March 5, 2008.

Describe any changes other than editing from proposed to adopted version: See Attachment B.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: Not applicable.

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:**

**Date adopted:**

4-30-08

**NAME (TYPE OR PRINT)**

Amie Lapp Payne, PhD

**SIGNATURE**

*Amie Lapp Payne*

**TITLE**

Deputy Director, Department of Early Learning

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
APR 30 2008	
TIME	204
WSR	08-10-041
	AM PM

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>12</u>	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	<u>21</u>	Repealed	<u>4</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>12</u>	Amended	<u>21</u>	Repealed	<u>4</u>

**ATTACHMENT A TO CR-103  
FOR RULES PROPOSED AS WSR 08-06-101  
DEPARTMENT OF EARLY LEARNING BACKGROUND CHECK RULES**

**Citation of existing rules affected by this order:**

**Repealed:**

WAC 170-296-150,  
170-296-0190,  
170-296-0195, and  
170-296-0205

**Amended:**

WAC 170-151-070,  
170-151-090,  
170-151-180,  
170-151-440, and  
170-151-470;

WAC 170-295-0010,  
170-295-0060,  
170-295-0070,  
170-295-0100,  
170-295-6060, and  
170-295-7050;  
and

WAC 170-296-0020,  
170-296-0180,  
170-296-0200,  
170-296-0210,  
170-296-0215,  
170-296-0220,  
170-296-0450,  
170-296-0550,  
170-296-1410, and  
170-296-1450.

**ATTACHMENT B TO CR-103  
FOR RULES PROPOSED AS WSR 08-06-101  
DEPARTMENT OF EARLY LEARNING BACKGROUND CHECK RULES**

**Describe any changes other than editing from proposed to adopted version:**

The following changes were made to the rules proposed as WSR 08-06-101 as a result of comments or for clarity:

**I. CHANGES TO SECTIONS OF ADOPTED NEW CHAPTER 170-06 WAC – DEL BACKGROUND CHECK RULES COMPARED TO THE PROPOSAL:**

**A. WAC 170-06-0020 - Definitions**

The proposed definition of “negative action” in subsection (9) is changed as follows:

- In subsection (9)(b), the phrase “not subject to further review” is deleted for clarity.
- In subsection (9)(c) the phrase “An adverse agency action, including” is added before “termination, revocation...” This change is to indicate “adverse agency action” means termination, revocation, or denial of a license, or surrender of a license if done in lieu of a pending adverse action.

**B. WAC 170-06-0040 - Background check requirements**

The proposed rule is changed as follows:

- In subsection (2)(b) the department deleted “arrests and the subsequent dispositions of such arrests” and inserted in its place the phrase “pending criminal charges”. This change makes the rule consistent with RCW 43.43.832 regarding the criminal information that DEL may investigate in a background check.
- In subsection (5), the phrase “care for or” is deleted after “An individual may not...” If left in the adopted rule, the deleted phrase would have prevented a person who had not yet completed the background clearance process from working *under supervision* or having *supervised access* to children in child care licensed or certified by DEL. This was not the intent of the rule.

**C. WAC 170-06-0050 – Department action following completion of a background check**

In subsection (1)(f), the proposed rule is changed to include “certification of rehabilitation.” This proposed subsection was also revised for clarity and to be consistent with the definition of “conviction record” in RCW 43.43.830. Regarding what will not be considered a conviction under this rule, the following wording was deleted:

“it [has been] pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.”;

The deleted language was replaced with:

“the conviction [has been] the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.”

**D. WAC 170-06-0060 Additional information the department may consider**

Proposed subsection (2) is changed to delete “DEL-approved evaluator” and replace the wording with “an evaluator who is licensed or certified under RCW 18.130.040.” This change requires that an individual who provides a health evaluation under subsection (1) of this rule must be licensed or certified by the Department of Health or the appropriate health profession board or commission. The list of these professions is in RCW 18.130.040.

**E. WAC 170-06-0070 – Disqualification**

The caption of the proposed rule is changed to “**Disqualification and reconsideration**” to more clearly reflect the rule content. The following changes to the rule content were made:

- Three new subheadings were added to help clarify the rule. These subheadings are:
  - “Background information that will disqualify an applicant” inserted before subsections (1) through (3)
  - “Background information that may disqualify an applicant” inserted before subsections (4) through (7)
  - “Reconsideration of disqualification” inserted before subsection (8).
- Subsections (1) and (2) were revised for clarity to refer to the appropriate subsections “(1)” and “(2)”, respectively, of WAC 170-06-0120 when describing the crimes that disqualify a person from a DEL background clearance.
- In subsection (3), “as defined in WAC 170-06-0020(9)” was added to be consistent with a similar reference in the term “negative action” in subsection (4) of this section.
- In subsection (7)(c), “reasonably” was added for clarity before the phrase “should have known that the illegal act occurred or would occur.”

#### **F. WAC 170-06-0120 - Director’s list**

This section includes a table that describes the crimes that disqualify an applicant from receiving a DEL background clearance. In column (a) of the table, “Commercial sexual abuse of a minor” was added to the list of crimes that permanently disqualify an applicant, and “Patronizing a juvenile prostitute” was deleted. Both changes make the rule consistent with the recent amendment of RCW 9.68A.100 (see chapter 368, Laws of 2007) that changed the name of this crime.

### **II. CHANGES TO AMENDED SECTIONS OF CHAPTER 170-151 WAC – SCHOOL AGE CHILD CARE COMPARED TO THE PROPOSAL**

#### **WAC 170-151-470 – What personnel policies and records must I develop and maintain.**

In subsection (1)(c), the word “lived” is changed to “resided” to be consistent with other rules in the proposal and with the RCW.

### **III. CHANGES TO AMENDED SECTIONS OF CHAPTER 170-296 WAC – FAMILY HOME CHILD CARE COMPARED TO THE PROPOSAL**

#### **A. WAC 170-296-0200 – Will my license be denied or revoked if I have been disqualified from providing licensed child care?**

The phrase “licensed child” is deleted before “care.” And after the word “care” the following phrase was added for clarity, “...for or having unsupervised access to children in child care.” This makes the phrasing of this rule consistent with other rules being adopted.

#### **B. WAC 170-296-0220 Must I keep the results of the background checks on family members, staff and volunteers?**

The WAC caption is changed to “**Must I keep a record of submitted background check forms and the results of the background checks on family members, staff and volunteers?**”

The WAC content is also changed. After “You must keep” was added the phrase “documentation of background check forms submitted...” The effect of this change is that licensees must document that they submitted background check applications, as well as keep a copy of the DEL background clearance authorization for persons covered by this rule.

#### **C. WAC 170-296-0450 When will my license be denied, suspended or revoked?**

The content of the current subsection (1)(b) was inadvertently deleted in the proposed rule and is being reinserted in its entirety. The subsection will read that the department must deny, suspend or revoke a license if you (the licensee) “(b) have been found to have committed or allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;”.

### **IV. THERE ARE NO CHANGES TO AMENDED SECTIONS OF CHAPTER 170-295 WAC AS PROPOSED IN WSR 08-06-101.**